

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

ANTHONY ROSE,)	
)	
Plaintiff,)	
)	
v.)	No. 3:08-cv-25
)	Phillips/Guyton
SEVIER COUNTY, TENNESSEE, ex rel.,)	
et al.,)	
)	
Defendants.)	

RESPONSE TO MOTION FOR SUMMARY JUDGMENT

Comes the Plaintiff, by and through counsel, pursuant to Fed. R. Civ. P. 56, and responds to Defendants, Sevier County, Sevier County Sheriff's Department, Ronald L. Seals, Paul Lintner (in his official capacity), Ken Hatcher, and Don Parton's motion for summary judgment.

There are numerous genuine issues of material fact with respect to the issues raised by the above-referenced Defendants in their motion for summary judgment. Therefore, summary judgment is inappropriate in this case and should be denied.¹

In support of this motion, Plaintiff attaches the following exhibits hereto:

- a. Affidavit of Robert Kinton (original previously filed in case no. 3:08-CV-300).
- b. Affidavit of Loretta Clark (original previously filed in case no. 3:08-CV-300).

¹ Defendants allege in reason No. 1 to their motion for summary judgment that Plaintiff failed to exhaust his administrative remedies properly prior to filing suit, but Defendants do not address this topic in their memorandum of law. Plaintiff believes that this item was included by mistake, as Plaintiff was not incarcerated at the time he filed his lawsuit. See *Mabry v. Freeman*, 489 F. Supp. 2d 782 (E.D. Mich. 2007)(the PLRA's exhaustion requirement does not apply to a former prisoner whose claim arose while he was incarcerated).

- c. Affidavit of Charles Fisher
- d. Pertinent portions of the deposition of Paul Lintner
- e. Pertinent portions of the deposition of Robert Kinton
- f. Pertinent portions of the deposition of Anthony Rose
- g. Pertinent portions of the deposition of Ron Seals
- h. Pertinent portions of the deposition of Don Parton
- i. Pertinent portions of the deposition of Ken Hatcher
- j. Defendant Paul Lintner's Ans. to Interrog. and Request for Production,
First Set
- k. Remaining Defendants' Ans. to Interrog. and Request for Production, First
Set, with attachments
- l. Defendant Paul Lintner's Ans. to Interrog. and Request for Production,
Second Set
- m. Remaining Defendants' Ans. to Interrog. and Request for Production,
Second Set, with attachments
- n. Paul Lintner Judgment of December 8, 2009
- o. Justin Cavnar complaint letter of 1-25-06 (attachment in response to
request for production of documents)
- p. Michael Gains complaint letter of 1-23-06 (attachment in response to
request for production of documents)
- q. Justin Cavnar taped interview (attachment in response to request for
production of documents)
- r. Paul Lintner's certificate of completion of basic training

- s. Paul Lintner's employment application (attached to responses for R Int. 4)
- t. Incident report (attached as Response No. 5 to Defendants' Sec. Set of RFP).

In addition, Plaintiff directs the Court's attention to his Memorandum of Law filed simultaneously with this Response.

Respectfully submitted this 17th day of November, 2011.

PEMBERTON & SCOTT, PLLP

s/ Dana Scott Pemberton

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2011, a copy of the foregoing Response to Motion for Summary Judgment filed by the Respective Defendants in this Case was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

s/ Dana Scott Pemberton

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